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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	GC Docket No. 92-52
	)	
Reeexamination of the Policy	)	
Statement on Comparative	)	
Broadcast Hearings	)	

COMMENTS OF
BLACK CITIZENS FOR A FAIR MEDIA,
MEDIA ACCESS PROJECT
NATIONAL ASSOCIATION FOR BETTER BROADCASTING,
PHILADELPHIA LESBIAN AND GAY TASK FORCE,
TELECOMMUNICATIONS RESEARCH AND ACTION CENTER,
DC CHAPTER OF THE NATIONAL ASSOCIATION OF PUERTO RICAN WOMEN,
OFFICE OF COMMUNICATION OF THE UNITED CHURCH OF CHRIST

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Summary

To ensure that the process for selecting among competing applicants better serve the public interest, the Commission should adopt a mandatory three-year service continuity requirement. The purpose of the comparative criteria -- to select the applicant who will best serve the community and to promote diversity of the airwaves -- is presently being frustrated by licensees' ability to transfer their stations, after only one year of operation, to persons who do not share the chosen applicants' characteristics.

Under a voluntary system the applicant chosen might not be the applicant pledging continued ownership. A mandatory three-year holding requirement would ensure that the applicant chosen on the basis of its characteristics would be the licensee serving the community, and would also render "sham" arrangements unprofitable.

The Commission should not adopt a point system. A point system is not likely to have a significant impact on reducing litigation. A point system's tendency to amplify the effect of small differences between applicants could lead to unjust results in comparative hearings. The end result of a point system is likely to be large numbers of ties, and the proposed tiebreakers contravene the Commission's mandate to select the best applicant and to promote diversity of the airwaves. ALJs should be allowed discretion to evaluate the unique characteristics of each applicant and each market.

The Commission should retain integration of ownership and management in its present form. The owner/manager's longer range outlook and stronger personal ties to the community, as well as the elimination of the time needed for a manager to consult with the owner are likely to lead to more accessibility and better service to the community.

Key language in appropriations legislation passed each year since 1987 flatly prohibits any reexamination of the minority ownership policy. However, assuming that the Commission's interpretation of the statute is correct, if integration is eliminated the Commission must institute minority ownership as a separate factor. Whether or not integration is eliminated, we urge the Commission to establish minority ownership as a separate factor, because the community benefits from minority ownership even in cases where the owners are fully integrated.

The Commission should reaffirm its treatment of diversification as a primary factor in comparative hearings. The American population is larger and more diverse than ever before, thus, the need for separately owned radio stations is greater today than in the past.

The Commission should continue treating proposed programming as a comparative factor. We urge the Commission to continue awarding credit to applicants that propose programming that demonstrates superior devotion to public service, and propose specific types of programs or technology that would merit a comparative credit.

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BLACK CITIZENS FOR A FAIR MEDIA, ET AL.

Black Citizens for a Fair Media, National Association for Better Broadcasting, Media Access Project, Telecommunications Research and Action Center, District of Columbia Chapter of the National Association of Puerto Rican Women, Philadelphia Lesbian and Gay Task Force, and the Office of Communication of the United Church of Christ, (hereinafter collectively referred to as "BCFM et al.") by their attorneys, Citizens Communications Center and Media Access Project, submit comments in response to the Notice of Proposed Rule Making (hereinafter "Notice" or "NPRM") in the above-captioned proceeding released April 10, 1992.[1]

The Notice solicits comments regarding whether and to what extent the 1965 Policy Statement has produced the public interest benefits intended by the Commission. To ensure that the

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[1] All of the above named parties are concerned with promoting diversity in broadcasting and quality program service. Collectively, these organizations represent a broad spectrum of broadcast viewers and listeners. Most have actively participated in previous Commission rule makings, including filing comments in the FCC proceeding proposing to select broadcast license by means of a lottery, 4 FCC Rcd 2256 (1989), and in the Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, Gen. Docket No. 90-264 (1990).

comparative process results in the selection of the applicant that will best serve the public interest, we propose that instead of adopting a point system, the Commission should retain and improve upon the existing comparative criteria. We agree with the Commission that the rapid transfer of stations contravenes the rationale of the comparative hearing criteria, and propose a mandatory three-year service continuity requirement. We question the Commission's authority to reexamine minority preferences, and propose that, whether or not integration of ownership and management is eliminated as a criterion, minority ownership must be considered as a separate factor. We also urge the Commission to reaffirm it current treatment of diversification as a primary factor, and to continue its policy of considering proposed programming in selecting licensees. Finally, we propose specific types of programs or technology that would merit a comparative credit.

I. THE COMMISSION SHOULD ADOPT A MANDATORY THREE YEAR SERVICE CONTINUITY REQUIREMENT

The Commission acknowledges the Bechtel Court's concern "that rapid transfer of a station awarded after a comparative selection appears to 'eviscerate' the rationale of the comparative process." Notice ¶ 28 (citing Bechtel v. FCC, No. 91-1112, slip op. at 13 (D.C. Cir. 1992)). To alleviate this problem, the Commission proposes a voluntary three year service continuity credit. Id. The Commission's proposal will not

accomplish its stated purpose because that proposal does not address the irrationality of the present system.

The purpose of the comparative criteria is to help the Commission predict which of two or more applicants will best serve community needs. In a comparative hearing an applicant is carefully selected on the basis of its characteristics. However, once an applicant is awarded a broadcast license, it is free to transfer that license after only one year of operation. The characteristics of the subsequent purchaser of the license are not screened, so licenses are often quickly sold to persons whose attributes are not as desirable as those of the chosen applicant. Consequently, the public is denied service by licensees who were chosen on the basis of their ability to promote diversity and to serve the public interest.

The proposed three-year service continuity criteria does not address this irrationality. Since the new criteria would be strictly voluntary, only some applicants will promise continued ownership of a station for three years. Moreover, the applicant chosen might not be the applicant pledging continued ownership. Thus, a voluntary three-year service continuity preference is a hit and miss approach that does not address the fundamental problems of the present system. On the other hand, making the three-year holding period mandatory would eliminate the irrationality of the present system, by ensuring that the applicant chosen on the basis of its characteristics is the one who operates the station.

Another benefit of an across-the-board, mandatory three-year service continuity requirement is that it would resolve the Commission's concern that the existing criteria lend themselves to manipulation by applicants, resulting in "sham" arrangements. NPRM ¶2. A mandatory three-year service continuity requirement would remove the incentive to enter into "sham" arrangements because the requirement that a licensee hold a station for three years would make such arrangements unprofitable.

An additional problem with the Commission's proposal, as well as the present system, is the existence of loopholes that make it possible for successful applicants in settled cases to get out of the promises they made to obtain grant of their application. See NPRM n.13. Successful applicants should be expected to adhere to their promises.[2] If the Commission is to

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[2] BCFM et al. believe that the Commission should extend the service continuity premise to all licenses, including those obtained by assignment or transfer. If the Commission believes that such action is beyond the scope of this proceeding, it should consider initiating a new proceeding to accomplish that important objective. In that connection, BCFM et al. emphatically dispute the Commission's premise (articulated at footnote 12 of the NPRM) that trafficking in stations acquired by purchase "do[es] not raise comparable concerns about the integrity of our processes." In fact, repeal of the former "anti-trafficking" rule has led to rampant speculation by applicants disinterested in serving the needs of a community. Those parties, who may intend to "flip" a station within months, are no more sincere in seeking to address the problems of the community than CP applicants who do not intend to retain their newly-built stations.

prevent manipulation of the comparative criteria, it must ensure that such loopholes do not exist.[3]

II. THE COMMISSION SHOULD NOT ADOPT A POINT SYSTEM

The Commission proposes to replace the current system of holding comparative hearings with a point system. The Notice asserts that a point system will "clarify and expedite the evaluation of competing applicants" and avoid "frivolous litigation over trivial differences." NPRM ¶ 31.

Because the Commission's proposal lacks detail it cannot be thoroughly evaluated. However, we comment here to illustrate the shortfalls of a point system in general.

A. A Point System Will Neither Decrease Litigation Nor Improve Rationality in Comparative Hearings

The Commission acknowledges that the use of a point system "would not preempt consideration of any substantial and material questions that may appear on a particular record" and "[a]pplicants would still be able to challenge their competitors' basic qualifications and their competitors' entitlement to the

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[3] One loophole of particular concern has resulted from the Commission's studied inaction on a matter which has been pending for one full year: whether the provisions of Sections 73.1620(g) and 73.3597(a) require that whenever all but one applicant in a comparative proceeding "voluntarily" dismiss their applications, the surviving applicant is freed of all divestiture and integration commitments. If the Commission does not remedy this problem, its service continuity proposal will be substantially undermined, and its ability to withstand judicial challenge will be seriously jeopardized. See, "Further Petition for Reconsideration and/or Clarification" filed June 14, 1991, by BCFM et al. in Docket No. 90-264.

comparative credit claimed." NPRM at ¶ 38 Since whether an applicant is entitled to credit for participation in civic affairs, differing lengths of past broadcast experience, and diversification is open to dispute, applicants are likely to challenge their opponent's claims. In addition, an applicant may also appeal an administrative law judge's decision about how many poits to attribute that particular applicant's characteristics. Therefore, while adoption of a point system may do away with some litigation, the impact a point system will have upon the number of cases contested may not be very meaningful.

The rationality of a point system is undermined by its tendency to amplify the effect of small differences between applicants. This point can be illustrated if we take the case of two competing applicants, one of which is 19% integrated and the other 21%. In such a case, a point system that draws the line for awarding points at 20% would grant a pivotal advantage to the applicant proposing 21% integration. Thus, a difference of a mere two percentage points could prove dispositive. This example also illustrates that, contrary to the Commission's assertion on ¶ 33 of the Notice, it is possible for point values to change in response to "minor variations in the applicant's attributes."

B. A Point System Deprives the Commission of the Discretion Necessary to Select the Best Applicant

A point system eliminates the ability of the Commission to utilize discretion to select the applicant that will best serve the public interest. The unique characteristics of each

applicant and each community necessitate that the Administrative Law Judge use discretion in evaluating the criteria. For example, diversification is more important in a market that is served by few broadcasters than in one where a multitude of existing broadcasters provide a wide variety of voices. Similarly, a specialized proposed program service, such as Spanish language programming, may be more important in a market where a significant number of Spanish-speaking people live and no programming in that language is available, as opposed to a market where that need is already met.

Judicial discretion is also necessary to consider the characteristics of the applicants themselves. In contrast to a mechanical point system, the current system allows Administrative Law Judges to assess the credibility and sincerity of the applicants and weigh their applications accordingly by discounting proposals which are implausible or insincere. For example, an ALJ may find that outside responsibilities undermine the credibility of an applicant's integration proposal, see, e.g., Berryville Broadcasting Inc., 70 FCC 2d 1, 11-12 (Rev.Bd. 1978), or the business arrangement may be a sham. see, e.g., Metroplex Communications, Inc., 4 FCC Rcd 847, 902-03 (1989), affirmed 5 FCC Rcd 5610, 5611-12 (1990).

The variety of hearing contexts also calls for flexibility in determining the relative weight of the criteria. For example, in Global Broadcasting Group, Inc., 94 FCC 2d 809, 813 (1983), the Commission gave prior broadcasting experience a greater

preference than normal because the comparative hearing was held to award a station on an interim basis. The Commission reasoned that the short period the new owners would have to operate the station would make it difficult for them to hire competent professional help. Therefore, it was important that the new owners have experience and the ability to operate the station themselves.

C. The Commission's Proposed Point System Will not Result in the Selection of the Applicant Best Able to Serve the Public Interest

The Commission has proposed a point system "similar" to that used for ITFS. NPRM, ¶ 32 n.15. ITFS employs a simple point system with a limited number of criteria and a small total number of points available.[4] Because ITFS is primarily an educational service rather than a "general interest consumer medium," the FCC does not consider many of the criteria that are important for radio and television broadcasting, such as diversity of ownership, minority ownership and programming. See Amendment to Part 74, 101 FCC 2d at 71. Commercial broadcasting stations are far more important to the public than ITFS stations. Thus, an effective point system for awarding traditional broadcast

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[4] The ITFS system considers five criteria: local applicants receive four points; accredited schools receive three; applicants who would acquire four or fewer channels in a community receive two; the number of hours an applicant schedules can earn one or two points; and existing licensee of an E or F channel receive one point. See Amendment to Part 74 of the Commission's Rules and Regulations In Regard to the Instructional Television Fixed Services, 101 FCC 2d at 69-70 (Released June 20, 1985) ("Amendment to Part 74").

stations (AM, FM, TV) would need to be far more complex than the system the Commission has proposed.

While the Notice implies that a point system will take into account additional criteria that are crucial to the public interest, such as minority ownership and diversity of ownership, Notice ¶ 32, to preserve the relative weighting that criteria receive under the hearing approach, an effective point system will need to account for a large number or variations. Thus, a suitable point system would necessarily be just as complex and no more efficient than the current system.

A point system also has the disadvantage of freezing the number of points allocated to each criterion, thus making it difficult for the comparative hearing process to respond to changes in the broadcast industry. A point system would need to be changed by rulemaking, while under the present system ALJs can adapt the criteria to changing conditions.

Another problem with a simple point system is that it is likely to result in large numbers of ties. The court in Telecommunications Res. & Action Center v. FCC, 836 F.2d 1349, 1358 (D.C. Cir. 1988) ("TRAC") noted noted that "deadlocks are more likely by the limited point system employed to assess competing applicants..." As a result, a simple point system will rely heavily on a tie-breaking procedure.

The Commission's tie-breaking proposals contradict its mandate to select the applicant that will best serve the public interest and to promote diversity of the airwaves. The methods

proposed by the Commission are to award the license to: (1) the applicant with the most broadcast experience; (2) the applicant who was first to apply; or (3) by lottery or other random method. NPRM, ¶ 36.

Awarding the station to the applicant with the most broadcast experience will adversely affect minorities and women because they have traditionally played only a limited role in the broadcast industry.[5] The Commission has found that using a lottery or any form of random selection is inconsistent with its obligation to select the applicant that will best serve the public. See Amendment of the Commission's Rules, 5 FCC Rcd at 4002. Likewise, awarding a license on a first-to-file basis offers no assurance that the best applicant will be chosen.

Thus we oppose a point system because it would not result in selecting the best applicant. However, If the Commission nonetheless adopts a point system, we suggest that, instead of one of the three proposed options, the Commission adopt a "public interest auction" to break ties. Under this system, tied applicants' proposals would remain open, and they would be given the opportunity to "bid" for the license by upgrading their proposals for public affairs/public interest programming, service continuity and/or other criteria specified by the Commission. Such an auction would not only break ties but also work to ensure

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[5]. Of over 8,000 FCC licensed Radio and TV stations participating in a survey, only 293 were controlled by minorities and 619 by women. See Congressional Research Service, Minority Broadcast Station Ownership and Broadcast Programming: Is There A Nexus? (June 29, 1988) at 9.

that stations are awarded to those best able to serve the public interest.

III. THE COMMISSION SHOULD RETAIN AND IMPROVE UPON THE EXISTING COMPARATIVE CRITERIA

Instead of adopting a point system, we urge the Commission to concentrate on improving the comparative hearing process. We note that the FCC recently took several steps in Dockets 90-263 and 90-264 that should result in improving the comparative hearing process.

This further rulemaking was prompted in part by the Court's recent decision in Bechtel. NPRM, ¶¶ 4, 14. The Bechtel court suggested that the Anax doctrine, and the Commission's rescission of the anti-trafficking rule had eviscerated the rationale behind the integration criteria. Bechtel, 957 F.2d at 879-880. We agree that the rapid transfer of a station awarded after a comparative hearing defeats the rationale of the comparative process. However, instead of eliminating the integration criteria, we urge the Commission to impose a mandatory service continuity requirement. See supra p.2.

Imposing an across-the-board service continuity requirement would also curtail "'strange and unnatural' business arrangements," Bechtel, 957 F2d at 880, resulting from abuse of the Anax doctrine. The Anax doctrine is intended to increase access to financing by minorities. In Docket 90-263, many

commenters made other suggestions for curbing abuse of Anax.[6] The Commission could alleviate the problem of "overly-creative" arrangements by adopting those suggestions and by requiring fuller financial and operational disclosure during the hearing process.[7] In sum, the Bechtel Court's valid concerns about the integrity of the hearing process can and should be remedied by the Commission.

The Bechtel Court, however, also questioned whether there was any basis for the fundamental belief expressed in the 1965 Policy Statement that a station managed by its owners would provide better service than a station run by a professional manager. In response to this concern, the Commission seeks comment on whether the traditional assumption that integration of ownership into management leads to better service to the community is still valid. NPRM ¶14. We believe that there is ample reason to find that in general, a station operated by its owners will provide better service to the community.

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[6] See supra n.1 at pp. 10-15.

[7] Requiring fuller financial and operational disclosure during the hearing process would help eliminate situations such as that which occurred in Fenwick Island Broadcast Corp., MM Docket No. 87-236, FCC 92R-36 (Rel. May 12, 1992), where the potential licensee is burdened with an option, or some other form of financial arrangement, that makes sale of the station to a person who was not contemplated as a potential license an inevitable outcome.

A. Integration of Ownership and Management Should be Retained as a Criterion in its Present Form

The assumption that owners who work at a station are likely to be more sensitive to local community needs than owners who do not work at the station is supported by numerous factors.

First, an integrated owner is in a better position to identify and respond to community needs than a non-integrated owner or a professional manager. While integration credit is not contingent on local ownership, Bechtel, slip op. at 9, as a practical matter, an integrated owner is almost always going live locally because he or she will need to live within commuting distance of the station. Thus, the integrated owner has direct ties to the community and is accessible to community groups who might wish to have input on the station's coverage of local issues.

Although the Bechtel Court points out that a professional manager is also likely to live in the community, a professional manager is also more likely to view his or her job as a "stepping stone" to a job with a station in a larger market. To advance his or her career, the professional manager may be more responsive to the non-local owner than to the community and will focus on maximizing profits. This focus on the bottom line is at odds with community-oriented programming that may not be as profitable as other types of programming. An owner/manager with a longer range outlook, and stronger ties to the community, is more likely to put quality service to the community above profit maximization.

In a similar manner, the owner/manager is in a better position to quickly respond to community needs.[8] Having an owner, who is also a manager, will eliminate the need (and consequent time and expense) for the manager to consult with the owner. For example, many group owners have a policy against giving free time for spot announcements on controversial issues. In the case of a hotly contested ballot issue, a manager may find that only one side is being presented and that the public interest requires that the other side be given some time to respond. In this circumstance, the manager would have to consult with the owner and convince the owner to make an exception to the policy. In an election period, there may be insufficient time to do this. This is just one of many scenarios arising on a daily basis in which the quicker responsiveness of a owner/operator will result in better service to the community.

Integration also supports the Commission's goal of diversification. Integration's practical effect of supporting local owners works to disfavor the large absentee owner, which is most likely to have multiple media interests.

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[8] The Bechtel court suggested that a professional manager may be as responsive to community needs as an integrated owner, Bechtel, 957 F.2d at 879, and the Commission has asked for comment on a credit for professional managers. NPRM at ¶ 15. This credit is unnecessary. If such a credit were allowed, experienced applicants with the ability to run a station in a competent manner would be penalized in comparison to applicants who need to hire a professional manager.

Thus, there is ample basis to support retaining the integration factor largely in its present form.[9] In the alternative, however, if the Commission decides to eliminate integration as a separate factor, and instead adopts minority ownership as a separate factor, we support retaining integration as an enhancement to those factors.[10] As we argue in the next section, minority ownership in and of itself benefits the public. However, it provides even greater public benefit when the minority owners are personally involved in running the station.

B. Minority Ownership Should be Added as a Separate Factor in Recognition of its Value Apart from Integration

The Notice requests comment on whether minority ownership should be treated as a separate factor if integration is eliminated. Notice, ¶ 22. We support establishing minority ownership as a separate factor whether or not the integration factor is eliminated because the benefits to the community from minority ownership are not limited to cases where the owners are fully integrated.

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[9] That is, if a mandatory three year service continuity requirement is established, See supra p. 2, and minority ownership is considered a factor apart from integration, See infra p. 15.

[10] We also support considering female ownership as a separate factor. In addition, we support considering local residence, past participation in civic affairs, and past broadcast experience as separate, albeit less important, factors. We do not favor granting a separate preference to applicants that own daytime AM stations because this defeats the goal of diversification.

In Metro Broadcasting v. FCC, 110 S.Ct. 2997, 3026-27 (1990), the Supreme Court found that the distress sale policy furthered the government's interest in diversity, even though that policy does not require the minority buyer to work at the stations. In support of its conclusion, the Court cited to a study showing that minority owned stations are more likely to employ minorities in managerial and other important roles where they can have an impact on station policies.[11] Thus, some credit for minority ownership should be given even where the minority owners do not propose to work at the station.

C. If the Commission Eliminates Integration as a Separate Factor It Must Give Substantial Preferences to Minority-Owned Applicants

The NPRM argues that its proposal to treat minority ownership as a separate comparative factor can be reconciled with Congressional enactments. NPRM, ¶ 23. In appropriations bills passed each year since 1987, Congress expressly provided that:

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[11] The Metro Court found that:

> Afro-American-owned radio stations, for example have hired Afro-Americans in top management and other important job categories at far higher rates than have white-owned stations, even those with Afro-American-oriented formats. The same has been true of Hispanic hiring at Hispanic-owned stations, compared to Anglo-owned stations with Spanish-language formats.

Metro 110 S.Ct. 2997, 3018 at n. 34, citing, Honig, Relationships Among EEO, Program Service, and Minority Ownership in Broadcast Regulation, in Proceedings From the Tenth Annual Telecommunications Policy Research Conference 88-89 (O. Gandy, P. Espinoza, & J. Ordover eds. 1983).

> [N]one of the funds appropriated by this Act shall be used to repeal, to retroactively apply changes in, or to continue a reexamination of, the policies of the Federal Communications Commission with respect to comparative licensing....under 26 U.S.C. 1071, to expand minority and women ownership of broadcasting licenses, including those established in the Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979, and 69 FCC 2d 1591, as amended 52 R.R. 2d 1313 (1982) and Mid-Florida Television Corp., 69 F.C.C. 2d 607 (Rev. Bd. 1978), which were effective prior to September 12, 1986...

Act of October 28, 1991, Pub. L. No. 102-140. The Notice asserts that this language merely is intended to prohibit the Commission from eliminating or diluting minority preferences. We question the reasonableness of this interpretation.

Key statutory language following the passage quoted in the Notice ¶ 23, which the Commission does not quote in its Notice, prevents the FCC from changing its minority ownership policy in any way. Congress specifically directs the Commission to refrain from any action:

> ... other than to close MM Docket No. 86-484 with a reinstatement of prior policy and a lifting of suspension of any sales, licenses, applications, or proceedings, which were suspended pending the conclusion of the inquiry....

Act of October 28, 1991, Pub. L. No. 102-140. Thus, the plain language of the statute flatly prohibits any reexamination of the existing minority ownership policy.

Assuming arguendo that the Commission's interpretation that the measure is intended only as a prohibition on Commission action to repeal or weaken minority and female preferences is correct, then the Notice is correct in concluding that if integration is eliminated as a factor, the Commission must consider minority ownership as a separate factor.

The Notice further states that "it is not our intention to change the proportionate weight currently given [minority] ownership factors in the comparative evaluation, and any change made to the comparative criteria . . . will preserve these factors' current relative weighting." NPRM, ¶ 23. We are concerned, however, that adoption of a point system would inevitably alter the weight currently afforded minority ownership in comparative hearings. Indeed, by reducing minority ownership to a set number of many possible points, the importance of minority ownership is diluted. Further, to the extent that a point system is likely to result in ties, See supra p. 9, the significance of minority ownership is further diminished.

D. Diversification Should be Retained as a Factor of Primary Significance

We strongly urge the Commission to reaffirm its current treatment of diversification as a factor of primary significance in comparative hearings. Although the NPRM does not propose any specific modifications to this factor, it asks whether the Commission should alter the way in which it treats the diversification factor in light of the revision of the radio ownership rules. NPRM, ¶ 21.

The Notice correctly recognizes the importance of the diversification factor in promoting both diversity of viewpoints and economic competition. Id. The FCC's recent decision to allow greater common ownership of radio stations, and its

proposal to increase ownership limits in television, contravene these goals, and are opposed by BCFM et al. for that reason.

The rationales put forth to support liberalizing the radio ownership rules do not support any change in the way in which the diversification factor is treated in comparative hearings. First, the Commission notes that the radio marketplace was more concentrated in the first half of the century than today. Revision of Radio Rules and Policies, FCC 92-97 (released April 10, 1992), ¶ 35. While this may be true, the American population is also much larger and more diverse today than in the first half of the twentieth century. Thus, if anything, the need for separately owned radio stations is greater today than in the past.

Second, the Commission claims that existing ownership rules deny stations efficiencies that could be realized by consolidation of station operation, including production of programming and news. Id. at 37.[12] The Commission notes that removal of the restrictions would allow stations to make greater profits, and thus lead to greater investment in programming. Id. at 38-39. Yet, nothing insures that increased station profits, if any, would be invested in programming that benefits the public. If the Commission is truly interested increasing

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[12] The Commission argues that existing rules may actually hamper competition and diversity. Yet, its solution -- to permit increased common ownership -- is diametrically opposed to those goals. It should be obvious that commonly-owned stations will not compete against each other; nor is it likely that stations utilizing the same news department will present different news stories or viewpoints.

broadcaster investment in programming, it should award a preference to the applicant proposing better programming. See supra p. 21.

Even if the Commission reaffirms its recent decision to permit greater common ownership, it still makes sense to prefer applicants without no (or fewer) other media interests in a comparative hearing. In a comparative hearing, by definition, more than one entity is interested in operating the station. If one or more of the applicants does not hold other media interests, that fact clearly suggests that the market can economically support additional independent voices. Since an applicant without other media holdings will by definition bring a new voice to the community and will increase competition, it should clearly be preferred over an otherwise equally qualified applicant.

The NPRM also asks whether it should alter the current way in which it considers diversification by suggesting that the diversification factor should not automatically receive the same weight in all cases, regardless of the community size and the number of media voices. NPRM ¶ 21. It is our understanding, however, the Commission currently possesses discretion to take into account both of these factors. See, e.g., Video 44, 4 FCC Rcd 1209 (1989) (subsequent history omitted) (applicant with interest in four radio stations prefered over applicant with interests in seven television stations, a radio station, cable systems, and program production and distribution facilities);

Hampshire County Broadcasting Col, Inc., 3 FCC Rcd 6137 (1988) (subsequent history omitted) (applicant with another station in community 80 miles away preferred over applicant that was licensee of of only commercial broadcast facility in the community). The ability to excercise such discretion to select the best applicant is one reason why we believe that the current system of hearings is far superior to a point system. See supra p. 6.

The NPRM also asks how the diversification factor should be treated should the Commission decide to adopt a point system. While we do not favor the use of a point system, if one is used, we believe that diversification must be given great weight. Depending on how such a point system were set up, we believe that it would be appropriate both to award different number of points to reflect different degrees and types of media ownership, as well as to subtract points for ownership of other media properties.

E. Proposed Programming Should Continue to be Treated as a Comparative Factor

The Notice requests comment on whether the benefits of retaining the proposed program service criterion outweigh the perceived detriments and, if so, how the preference could be more workably administered. NPRM, ¶ 17. We urge the Commission to preserve the opportunity for applicants to obtain comparative preference by showing a superior devotion to public service. We